

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ANGELICA DEL VALLE PÉREZ,
et al.,

Plaintiffs,

Civil No. 06-2184 (JAF)

V.

POLICE DEPARTMENT OF PUERTO RICO, et al.,

Defendants.

OPINION AND ORDER

Plaintiffs Angélica Del Valle Pérez ("Del Valle") and her common-law partner José Padín bring this action against Defendants Police Department of Puerto Rico ("PDPR"), Carlos Merced, Richard Robles, José Vélez Cuba ("Vélez"), Ismael Martínez, Melvin Soberal Morales ("Soberal"), and unnamed PDPR supervisors, alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e to 2000e-17, the Constitution of Puerto Rico, and Puerto Rico laws, 29 L.P.R.A. §§ 146-51 (2001 & Supp. 2006), 29 L.P.R.A. §§ 467-74 (2001), 29 L.P.R.A. §§ 1321-41 (2001), 29 L.P.R.A. §§ 155-155m (2001), and 31 L.P.R.A. § 5141 (1990). Docket No. 1. Plaintiffs seek injunctive and declaratory relief and damages for sexual harassment, pregnancy discrimination, and retaliation. *Id.* Defendants move for summary judgment, Docket No. 43, and Plaintiffs oppose, Docket No. 54. Defendants have also filed a supplemental motion for summary judgment, Docket No. 63, which

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1 Plaintiffs move to strike, Docket No. 65. Also before us is
2 Plaintiffs' response to our Show Cause Order of January 26, 2009,
3 Docket No. 75. Docket No. 76.

4 **I.**5 **Factual and Procedural Synopsis**

6 We derive the following factual summary from the parties'
7 motions, statements of material facts, and exhibits. Docket Nos. 43,
8 44, 54, 55, 63, 64, 65, 67, 76, 79.

9 Plaintiff Del Valle, a resident of Manatí, Puerto Rico, has been
10 employed as a police officer with PDPR since November 2004.
11 Defendants Merced, Robles, Vélez, and Martínez are members of the
12 PDPR with supervisory authority over Del Valle. Defendant Soberal is
13 a police officer who worked with Del Valle.

14 Plaintiffs allege that, shortly after beginning work at the
15 PDPR, Del Valle began to experience harassment from her co-worker
16 Soberal and later from her supervisors. Plaintiffs submit evidence of
17 the following facts; it is not clear to what extent these facts are
18 contested by Defendants: In January 2005, on Del Valle's first
19 investigative assignment, while she was alone in a police vehicle
20 with Soberal, Soberal began discussing his sexual activities with his
21 wife. He informed Del Valle that he was very sexually open, and
22 stated that he liked using a vibrator on his wife so that he could
23 please her first. Del Valle reported this incident to Martínez, who
24 told her that he would discuss the incident with Soberal. A few days

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1 later, Vélez called Del Valle at night to admonish her for "refusing
2 to work with" Soberal. On another instance, in February 2005, Soberal
3 approached Del Valle in a hallway at PRPD and asked her, in front of
4 Martinez, to wear a short skirt sometimes so that he could throw a
5 quarter down and look at her. Following this incident, Del Valle was
6 so offended she had to run to the restroom to compose herself.

7 Shortly thereafter, Del Valle met with Vélez to explain her
8 unwillingness to work with Soberal, but Vélez stated that he was not
9 interested in hearing her complaint and that Martinez was responsible
10 for preparing a report on the issue. Del Valle met with Soberal and
11 Martinez later the same day to discuss the situation. At that
12 meeting, Soberal stated that he "kn[ew] a lot of attorneys and
13 Assistant District Attorneys." Del Valle requested that she and
14 Soberal not be required to interact with each other at work. After
15 the meeting, Del Valle was no longer assigned to work with Soberal;
16 however, they remained on the same shifts at PRPD.

17 Del Valle states that prior to these incidents she had a good
18 working relationship with Merced, another supervisor. Merced was on
19 vacation during the incidents, but was informed of the situation upon
20 his return. Del Valle states that following this, Merced's conduct
21 toward Del Valle became hostile.

22 In March 2005, Del Valle learned that she was pregnant. Later
23 that month, Del Valle sought an accommodation from Merced for her
24 pregnancy, but Merced refused. Over the next two months, Del Valle

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1 experienced complications with the pregnancy and submitted a total of
2 five medical certificates to Merced requesting accommodations.
3 Merced repeatedly insisted he had no work for pregnant women and
4 offered no accommodation. In late May 2005, Merced informed Del Valle
5 that he would have to transfer her to Arecibo, although Del Valle
6 alleges that other pregnant women had been accommodated with work in
7 the Bayamón office. Around the same time, Merced brought up Del
8 Valle's complaints of sexual harassment, and told her that there was
9 no harassment, that he didn't know what to do with her, and that her
10 transfer might not be accepted due to the allegations she had made.

11 Merced then arranged a meeting with Robles, a high-ranking PDPR
12 inspector. At the meeting, Del Valle presented Robles with a
13 memorandum detailing the harassment she had experienced to that
14 point, but Robles chastised her for doing so.

15 Del Valle was transferred to Arecibo on June 1, 2005. She
16 alleges that the harassment nevertheless continued, as Merced filed
17 false administrative complaints against her.

18 During this time period Del Valle experienced high blood
19 pressure and other medical complications with her pregnancy. She gave
20 birth to her daughter one month early on November 16, 2005.
21 Plaintiffs filed a charge of discrimination with the EEOC on
22 December 14, 2005. Docket No. 76-2.

23 Del Valle returned to work from maternity leave around January
24 or February 2006. At this time, she inquired and discovered that no

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1 action had been taken on her internal harassment complaint. Del Valle
2 also states that Merced continued to harass her by treating her in a
3 hostile manner and filing false charges against her. For example, in
4 May 2006, Merced issued an "absent employee report" against Del Valle
5 after she had sought vacation leave to take her daughter to the
6 pediatrician. As a result, Del Valle states she continued to
7 experience emotional anguish, as well as physical symptoms, such as
8 high blood pressure.

9 During this time period, Merced attempted to influence América
10 Ortiz García ("Ortiz"), the officer assigned to investigate Del
11 Valle's harassment complaints. He also filed a grievance against
12 Ortiz, falsely alleging that she was biased against him, which
13 resulted in her removal from the case. Del Valle states that to date,
14 no action has been taken on her internal harassment complaints.

15 On June 5, 2006, and August 30, 2006, Del Valle filed additional
16 charges of discrimination with the EEOC. Docket Nos. 76-3, 76-4. The
17 EEOC issued right-to-sue letters on August 31 and September 1, 2006.
18 Docket No. 18-2.

19 On November 27, 2006, Plaintiffs filed the present action.
20 Docket No. 1. Defendants moved for summary judgment on September 15,
21 2008, Docket No. 43, and Plaintiffs opposed on October 8, 2008,
22 Docket No. 54. Defendants filed a supplemental motion for summary
23 judgment on October 23, 2008. Docket No. 63. On October 24, 2008,
24 Plaintiffs moved to strike the supplemental motion, Docket No. 65,

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1 and on October 29, 2008, Defendants opposed, Docket No. 66. On
2 January 26, 2009, we ordered Plaintiffs to show cause as to why we
3 should not dismiss their Title VII claims for failure to exhaust
4 remedies. Docket No. 75. Plaintiffs responded to our order on
5 February 12, 2009. Docket No. 76.

6 **II.**

7 **Summary Judgment Standard under Rule 56(c)**

8 _____ We grant a motion for summary judgment "if the pleadings, the
9 discovery and disclosure materials on file, and any affidavits show
10 that there is no genuine issue as to any material fact and the movant
11 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).
12 A factual dispute is "genuine" if it could be resolved in favor of
13 either party, and "material" if it potentially affects the outcome of
14 the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st
15 Cir. 2004).

16 The moving party carries the burden of establishing that there
17 is no genuine issue as to any material fact; however, the burden "may
18 be discharged by showing that there is an absence of evidence to
19 support the nonmoving party's case." Celotex Corp. v. Catrett, 477
20 U.S. 317, 325, 331 (1986). The burden has two components: (1) an
21 initial burden of production, which shifts to the nonmoving party if
22 satisfied by the moving party; and (2) an ultimate burden of
23 persuasion, which always remains on the moving party. Id. at 331.

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In evaluating a motion for summary judgment, we must view the record in the light most favorable to the non-moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). However, the non-moving party "may not rely merely on allegations or denials in its own pleading; rather, its response must . . . set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e) (2).

III.

Analysis

A. Order to Show Cause

We ordered Plaintiffs to show cause as to why we should not dismiss their Title VII sex discrimination claims due to their failure to exhaust remedies by filing a charge with the EEOC. Docket No. 75. It appeared from the record that Plaintiffs had only filed an EEOC charge of retaliation. See Docket No. 55-12. Plaintiffs responded by submitting a total of three charges filed with the EEOC, which allege sex discrimination - including sexual harassment and pregnancy discrimination - and retaliation. Docket Nos. 76-2, 76-3, 76-4. Plaintiffs have, thus, satisfied us that they exhausted their remedies as to these claims.¹

¹ Defendants, in their supplemental motion for summary judgment, argue that we lack subject matter jurisdiction over Plaintiffs' sex discrimination claims because Plaintiffs filed only a charge of retaliation with the EEOC. Docket No. 63. Plaintiffs' submission of their two additional EEOC charges renders this argument moot. See Docket Nos. 76-3, 76-4.

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1 We also ordered Plaintiffs to show cause as to why we should not
2 dismiss their Title VII retaliation claim for failure to file a
3 charge within 180 days. Docket No. 75 (citing 42 U.S.C. § 2000e-
4 5(e)(1) and 29 C.F.R. § 1601 & n.5). The English portions of the
5 then-untranslated Spanish EEOC charge Plaintiffs had filed indicated
6 that the retaliation ended more than 180 days before the filing date.
7 See Docket No. 55-12. Plaintiffs have now submitted an official
8 English translation of that charge, as well as the two additional
9 charges. Docket Nos. 76-2, 76-3, 76-4. The allegations in the
10 charging documents, along with the evidence in the summary judgment
11 record, suggest that Plaintiff may have been subject to a continuing
12 pattern of discriminatory acts beginning in January 2005 and
13 continuing up to or beyond the filing of her last EEOC charge on
14 August 30, 2006. See Docket Nos. 55, 76. Because at least some of
15 these acts fall within 180 days of the filing of the charges, they
16 would, if proven at trial, serve to anchor the remaining acts of
17 discrimination. See, e.g., DeNovellis v. Shalala, 124 F.3d 298, 307-
18 08 (1st Cir. 1997) (explaining that where a series of discriminatory
19 acts occurs, each constituting a separate Title VII violation, at
20 least one actionable violation must occur within the relevant time
21 period). We, therefore, find that Plaintiffs' EEOC charges were
22 timely filed.

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1 **B. Motion for Summary Judgment**

2 ____ Defendants move for summary judgment on the grounds that
 3 (1) there is insufficient evidence to support a claim for sexual
 4 harassment under Title VII, (2) there is insufficient evidence to
 5 establish a claim for retaliation under Title VII, and
 6 (3) Plaintiffs' tort claims are time-barred. Docket No. 43.

7 **1. Sexual Harassment**

8 Del Valle alleges she was the victim of sexual harassment in the
 9 form of a hostile work environment at PRPD. Docket No. 1. Defendants
 10 argue that (1) the evidence in the record does not contain facts
 11 severe or pervasive enough to constitute sexual harassment, and
 12 (2) there is no basis for employer liability. Docket No. 43.

13 Title VII provides that "[i]t shall be an unlawful employment
 14 practice for an employer . . . to discriminate against any individual
 15 with respect to [her] compensation, terms, conditions, or privileges
 16 of employment because of such individual's race, color, religion, sex
 17 or national origin." 42 U.S.C. § 2000e-2. "[S]exual harassment is a
 18 'form of [sex] discrimination prohibited by Title VII.'" O'Rourke v.
 19 City of Providence, 235 F.3d 713, 728 (1st Cir. 2001) (quoting
 20 Provencher v. CVS Pharmacy, 145 F.3d 5, 13 (1st Cir. 1998)).

21 To establish a sexual harassment hostile work environment claim
 22 under Title VII, a plaintiff must demonstrate that (1) she is a
 23 member of a protected class; (2) she experienced unwelcome sexual
 24 harassment; (3) the harassment was based on sex; (4) the harassment

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1 was sufficiently severe or pervasive so as to alter the conditions
2 of her employment and create an abusive work environment; (5) the
3 conduct was both objectively and subjectively offensive, such that
4 a reasonable person would find it hostile or abusive and the victim
5 in fact perceived it to be so; and (6) some basis for employer
6 liability exists. O'Rourke, 235 F.3d at 728 (citing Faragher v. City
7 of Boca Raton, 524 U.S. 774, 787-88 (1998)).

8 In our analysis, we look to the totality of the circumstances,
9 including but not limited to: the frequency and severity of the
10 discriminatory conduct; "whether it is physically threatening or
11 humiliating, or a mere offensive utterance; and whether it
12 unreasonably interferes with an employee's work performance."
13 Billings v. Town of Grafton, 515 F.3d 39, 48 (1st Cir. 2008) (quoting
14 Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)) (internal
15 quotation marks omitted). The summary judgment standard "polic[es]
16 the baseline for hostile environment claims." Id. at 50 (quoting
17 Pomales v. Celulares Telefonica, Inc., 447 F.3d 79, 83 (1st Cir.
18 2006)) (internal quotation marks omitted). However, whether a hostile
19 work environment exists is generally to be determined by the finder
20 of fact. Id. at 47 n.7, 50.

21 In the present case, Plaintiffs submit evidence that on Del
22 Valle's first investigative assignment, while she was alone in a
23 police vehicle with Soberal, Soberal began explicitly discussing his
24 sexual activities with his wife. Docket No. 55. Del Valle reported

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1 this incident to Martínez, who told her that he would discuss the
2 incident with Soberal. Id. On another occasion, Soberal approached
3 Del Valle in a hallway at PRPD and asked her, in front of Martínez,
4 to wear a short skirt sometimes so that he could throw a quarter down
5 and look at her, suggesting that he wanted to look at her genitals
6 or underwear. Id. Shortly thereafter, also in front of Martínez,
7 Soberal threatened Del Valle by stating that he "kn[ew] a lot of
8 attorneys and Assistant District Attorneys." Id. After the meeting,
9 Del Valle was no longer assigned to work with Soberal; however, they
10 remained on the same shifts at PRPD despite Del Valle's request that
11 they not be required to interact with each other. Id.

12 It is unclear from their filings whether Defendants contest
13 these facts. Nonetheless, drawing all reasonable inferences in
14 Plaintiffs' favor, we find that there remains a triable issue for the
15 jury as to whether this conduct was severe or pervasive to constitute
16 a hostile work environment. Soberal subjected Del Valle to harassing
17 comments on at least three occasions. Two of these were explicit and
18 offensive sexual remarks, and the third was a threat. The remarks
19 made in front of her supervisor could be considered humiliating. Del
20 Valle indicates, further, that these remarks and her supervisors'
21 failure to correct the situation interfered with her ability to do
22 her job as a police officer by causing her emotional anguish with
23 physical manifestations. Finally, we note that such remarks in the
24 context of a police force, a historically male-dominated field, could

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be considered by a factfinder to be especially threatening or offensive as compared with the same remarks made in other circumstances. Cf. O'Rourke, 235 F.3d at 735 ("We do not believe that a woman who chooses to work in the male-dominated trades relinquishes her right to be free from sexual harassment" (quoting Williams v. Gen. Motors Corp., 187 F.3d 553, 563-64 (6th Cir. 1999) (internal quotation marks omitted))). Although we recognize that these facts may constitute a borderline case of sexual harassment, we do not find that they fall below the summary judgment baseline set by this circuit's hostile work environment case law. See Billings, 515 F.3d at 48-52 (limning the boundaries of what conduct "a reasonable jury could have found . . . sufficiently severe or pervasive to constitute a hostile environment as a matter of law" and citing cases).

Defendants argue, however, that even if Del Valle suffered sexual harassment, Plaintiffs cannot demonstrate that PRPD should be held liable for Soberal's actions.² Docket No. 43. An employer can only be held liable for an employee's harassment by a co-worker where

²Specifically, Defendants argue that PRPD is entitled to an affirmative defense to its liability based on Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998) and Faragher, 524 U.S. 775. Docket No. 43. Defendants' reliance on the Faragher/Ellerth defense is misplaced, however, as the doctrine provides only a defense to an employer's vicarious liability "for hostile work environments created by supervisors." Noviello v. City of Boston, 398 F.3d 76, 95 (1st Cir. 2005). It is uncontested that Soberal is a co-worker, and not a supervisor, of Del Valle.

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1 there exists "some negligence on the employer's part." Noviello, 398
2 F.3d at 95. "Typically, this involves a showing that the employer
3 knew or should have known about the harassment, yet failed to take
4 prompt action to stop it." Id. (citing Crowley v. L.L. Bean, Inc.,
5 303 F.3d 387, 401 (1st Cir. 2002)).

6 Plaintiffs allege that Del Valle complained of Soberal's conduct
7 to her supervisors Martínez, Merced, Vélez, and Robles at various
8 times. Docket No. 55. On one occasion, Del Valle says Vélez called
9 her at night to admonish her for "refusing to work with" Soberal.
10 Id. Plaintiffs further state that Martínez witnessed some of the
11 harassment. Although Martínez stated he would speak to Soberal, the
12 harassment continued. While Soberal was no longer assigned to work
13 directly with Del Valle, they continued to work on the same shifts
14 and encounter each other at the station, despite Del Valle's request
15 that this not occur. Finally, Del Valle proffers evidence that
16 although she sought assistance through the established channels for
17 complaints of sexual harassment at the PRPD, no action was taken on
18 her complaint. Plaintiffs have, thus, introduced sufficient evidence
19 to generate a genuine issue of material fact as to whether PRPD was
20 on notice of the harassment and failed to take appropriate corrective
21 action. See Noviello, 398 F.3d at 96-97. Summary judgment is,
22 therefore, inappropriate on the sexual harassment claim.

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1 **2. Retaliation**

2 Plaintiffs allege that Del Valle's supervisors subjected her to
3 continued retaliatory acts and a hostile work environment for her
4 complaints of the alleged sexual harassment. Docket No. 1. Defendants
5 assert that we should dismiss Plaintiffs' retaliation claim. Docket
6 No. 43. Defendants, however, fail to state any legal basis on which
7 they are entitled to summary judgment on this claim, arguing only
8 that (1) although Plaintiffs assert that Merced refused Del Valle an
9 accommodation for her pregnancy, she in fact received an appropriate
10 accommodation, and (2) contrary to Plaintiffs' assertion, Soberal and
11 Merced are not friends; therefore, this cannot be a reason why Merced
12 would retaliate against Del Valle. Id. As Plaintiffs note, these
13 facts are, by definition, contested. See Docket Nos. 54, 55.
14 Furthermore, Plaintiffs have proffered evidence on significantly more
15 than these two facts in support of their claim for retaliation. See
16 id. Defendants have wholly failed to demonstrate that no genuine
17 issues exist as to the material facts of this claim.

18 **3. Statute of Limitations for Tort Claims**

19 Finally, Defendants argue that Plaintiffs' tort claims are
20 barred by a one-year statute of limitations. Docket No. 43.
21 Defendants assert that the claims accrued when Del Valle's harassment
22 began, between January and March 2005. Id. Plaintiffs do not contest
23 this formulation of the accrual date, but argue instead that their

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1 tort claims were tolled by the filing of the charges before the EEOC.
2 Docket No. 54.

3 The Puerto Rico statute of limitations for tort actions is one
4 year. 31 L.P.R.A. § 5298(2) (1990); Tokyo Marine & Fire Ins. Co. v.
5 Pérez & Cía. de P.R., Inc., 142 F.3d 1, 3-4 (1st Cir. 1998). The
6 statute of limitations begins to run when the aggrieved party has
7 knowledge of the injury sufficient to institute an action. Sánchez
8 v. Autoridad de Energía Eléctrica, 142 D.P.R. 880, 1997 P.R. Eng.
9 878520 (1997). The filing of a charge with an administrative agency,
10 such as the EEOC, does not toll the running of the statute of
11 limitations for a tort action. Leon-Nogueras v. Univ. of P.R., 964
12 F.Supp. 585, 588 (D.P.R. 1997) (citing Cintrón v. E.L.A., 127 D.P.R.
13 582, 595-96 (1990)).

14 Plaintiffs filed the present suit on November 27, 2006. Docket
15 No. 1. Therefore, any cause of action that accrued prior to
16 November 27, 2005 is barred by the statute of limitations. See 31
17 L.P.R.A. § 5298(2). Plaintiffs have introduced evidence of a series
18 of harassing acts committed by Defendants which began in January 2005
19 and continued through at least May 2006 or later. See Docket No. 55.
20 Plaintiffs had knowledge of their injury at the time of the
21 harassment; therefore, their cause of action accrued at the time the
22 harassing acts occurred. Thus, Plaintiffs may pursue damages only for
23 conduct by Defendants that took place on or after November 27, 2005.

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2 Any claim for damages arising from events that took place prior to
3 that date is time-barred.

4 **IV.**

5 **Conclusion**

6 For the reasons stated herein, we **GRANT** Defendants' motion for
7 summary judgment **IN PART** and **DENY** it **IN PART**, Docket No. 43. We **GRANT**
8 summary judgment for Defendants on Plaintiffs' tort claims arising
9 from conduct before November 27, 2005, and **DENY** the remainder of
10 Defendants' motion. Remaining are Plaintiffs' Title VII claims for
11 sexual harassment, pregnancy discrimination,³ and retaliation; their
12 31 L.P.R.A. § 5141 tort claims arising on or after November 27, 2005;
13 and those under 29 L.P.R.A. §§ 467-74, 29 L.P.R.A. §§ 1321-41, 29
14 L.P.R.A. §§ 155-155m. We also **DENY** Defendants' supplemental motion
15 for summary judgment, Docket No. 63, and Plaintiffs' motion to
strike, Docket No. 65, as **MOOT**.

16 The parties are encouraged to exhaust all settlement
17 possibilities before the trial commences next Monday, February 23,
18 2009.

19 **IT IS SO ORDERED.**

20 San Juan, Puerto Rico, this 20th day of February, 2009.

21 s/José Antonio Fusté
22 JOSE ANTONIO FUSTE
23 Chief U.S. District Judge

³Defendants have not challenged Plaintiffs' pregnancy discrimination claim.